

REMARKS/ARGUMENTS

1. Status of the claims

Claims 21-75 were withdrawn from consideration by the Examiner and are canceled in this Amendment. Claims 1-20 are pending and under consideration with entry of this Amendment.

2. Rejection under 35 U.S.C. § 102(e)

Claims 1 and 2 were rejected under 35 U.S.C. § 102(e) as allegedly anticipated by Nonomura *et al.*, U.S. Patent No. 5,958,104. Applicants respectfully traverse the rejection, as the present inventors completed the claimed invention prior to the priority date of the cited reference.

Applicants submit herewith, under separate cover, a Declaration under 37 C.F.R. § 1.131, signed by the inventors, to overcome the cited prior art reference. The Declaration describes conception of and reduction to practice of the claimed invention, in the United States, prior to the September 11, 1997 priority date of the cited patent.

The present claims recite a method for increasing net growth in a plant or seed comprising applying an agent comprising lumichrome to the plant or seed in an amount effective for increasing net growth in the plant. Prior to the priority date of Nonomura *et al.*, Applicants conceived of and reduced to practice in the United States the claimed method. As described in the accompanying Declaration of Donald A. Phillips, Cecilia M. Joseph and James R. Sanborn, Applicants applied an HPLC-purified fraction (peak D) comprising lumichrome to a plant and detected an increase in net photosynthesis prior to September 11, 1997. Applicants thus have demonstrated completion of the invention prior to the September 11, 1997 priority date of of Nonomura *et al.* Because the filing of the Declaration removes Nonomura *et al.* as prior art against the above-referenced patent application, Nonomura *et al.* cannot form the basis of an anticipation rejection under 35 U.S.C. § 102(e). Applicants therefore respectfully request withdrawal of the rejection.

Appl. No. 09/831,958
Amdt. dated October 6, 2003
Reply to Office Action of July 16, 2003

PATENT

3. Rejection under 35 U.S.C. § 103

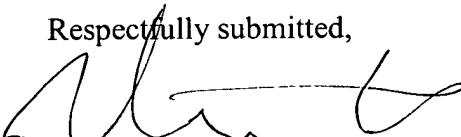
Claims 3-20 were rejected under 35 U.S.C. § 103 as allegedly obvious in view of Nonomura *et al.*, U.S. Patent No. 5,958,104. Applicants respectfully traverse the rejection, as the present inventors completed the claimed invention prior to the priority date of the cited reference.

As discussed above, the claimed invention was conceived and reduced to practice before the priority date of Nonomura *et al.* Accordingly, Applicants respectfully request withdrawal of the rejection.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 415-576-0200.

Respectfully submitted,

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